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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
Promotion of Competitive Networks in Local Telecommunications Markets	)	WT Docket No. 99-217

COMMENTS OF GRANDE COMMUNICATIONS NETWORKS, INC.

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SUMMARY OF COMMENTS
OF GRANDE COMMUNICATIONS NETWORKS, INC.

Grande Communications Networks, Inc. ("Grande") welcomes the opportunity to describe its experiences with building owners and independent local exchange carriers in the provision of advanced telecommunications services. Grande also urges the Federal Communications Commission ("Commission"), in addition to collecting information on the state of the market, to provide further guidance and to clarify and amend certain provisions of the *Competitive Networks Order* related to the demarcation point rules.

The Commission's regulations to date have provided important protection for a fair process of development of competition in telecommunications services. Nevertheless, Grande's experience is that barriers remain to the establishment of fair competition for MTE customers. The Commission should provide further guidance to (1) eliminate these barriers and the inefficiencies that remain, (2) to prevent further potential misuse of market power by ILECs, and (3) to ensure the development of a fully competitive environment for telecommunications services to customers in MTEs. To advance the Commission's policies set forth in the *Competitive Networks Order*, Grande respectfully proposes that the Commission clarify and further amend the inside wire access provisions of 47 C.F.R. § 68.105 to:

(1) clarify the 45-day requirement;

(2) clarify the MTE owner's control of access facilities and ensure that the principles of agency are not altered by 47 C.F.R. § 68.105; and

(3) specify limits to ILEC demands for indemnification from CLECs in negotiations for CLEC access to MTEs.

Grande also proposes a new rule to enable second carrier access at new or modified MTEs.

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I. INTRODUCTION

Grande Communications Networks, Inc. ("Grande"), by its attorneys, hereby submits its comments in response to the Federal Communications Commission's ("Commission") Public Notice in the above-referenced proceeding.[1]

Grande is a facilities-based competitive local exchange carrier ("CLEC") with significant interest in the Commission's efforts to ensure nondiscriminatory and timely access for CLECs to customers in Multiple Tenant Environments ("MTEs"). In its *Competitive Networks Order* in this proceeding, the Commission noted that the state of the market for local telecommunications services should be assessed after a reasonable period of time had passed following the implementation of the order.[2] By these comments, Grande describes its experiences in providing

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[1] *Wireless Telecommunications Bureau Requests Comment on Current State of the Market for Local and Advanced Telecommunications Services in Multitenant Environments*, Public Notice, DA 01-2751 (November 30, 2001) (amended in *Wireless Telecommunications Bureau Extends Deadline for Comments on Current State of the Market for Local and Advanced Telecommunications Services in Multitenant Environments*, Public Notice, DA 02-67 (January 16, 2002)) ("Public Notice").

[2] Promotion of Competition in Local Telecommunications Markets, WT Docket No. 99-217, *First Report and Order and Further Notice of Proposed Rulemaking*; CC Docket No. 96-98, *First Report and Order and Memorandum Opinion and Order*; and CC Docket No. 88-57, *Fourth Report and Order and Memorandum Opinion and Order*, rel. October 25, 2000, 15 FCC Rcd. 22,983 (2000), p. 67, ¶ 3. ("*Competitive Networks Order*").

telecommunications services at residential MTEs in Austin, San Antonio, and San Marcos, Texas.

Grande's experience, as shown below, is that barriers remain to the establishment of fair competition for MTE customers. Although the Commission's regulations to date have provided important protection for a fair process of development of competition in telecommunications services, the Commission should provide further guidance to eliminate inefficiencies that remain, to ensure the development of a fully competitive environment for telecommunications services to customers in MTEs and to prevent potential misuse of market power by incumbent local exchange carriers ("ILECs") that might thwart access by CLECs to MTEs.

II. DESCRIPTION OF GRANDE AND ITS SERVICE AREA

A. Grande Serves the Austin – San Antonio Corridor

Grande is a facilities-based broadband service provider headquartered in San Marcos, Texas currently serving the Austin – San Antonio Corridor (the "Corridor"), a metropolitan area stretching approximately 79 miles along Interstate Highway 35 in Central Texas.[3] Grande holds multiple regulatory certifications, including authority to operate as a CLEC, interexchange carrier, and cable provider. To date, Grande has negotiated 28 cable franchise agreements[4] with municipalities along the Corridor. Pursuant to these franchise agreements, Grande is required to

[3] Exhibit A is a map of the Greater Austin – San Antonio Corridor, an area comprising about 7,585 square miles. Greater Austin – San Antonio Corridor Council, San Marcos, Texas, corridor@itouch.net; http://www.zilker.net/corridor.

[4] Currently, Grande has successfully negotiated cable franchise agreements with the following municipalities along the Greater Austin – San Antonio Corridor: Alamo Heights, Austin, Balcones Heights, Buda, Castle Hills, Cedar Park, Cibolo, Converse, Garden Ridge, Hollywood Park, Kirby, Kyle, Leander, Leon Valley, Live Oak, New Braunfels, Olmos Park, Pflugerville, San Antonio, San Marcos, Schertz, Selma, Sunset Valley, Terrell Hills, Universal City, West Lake Hills, Windcrest, and Round Rock. In addition to these agreements with cities along the Austin – San Antonio Corridor, Grande has also negotiated a cable franchise agreement with the City of Houston.

deploy a new fiber-to-the-curb broadband network[5] within five to seven years in each city. Grande is only in its second year of the build-out process and began providing bundled services in February 2001. Grande's state-of-the-art, fiber-based telecommunications network offers the flexibility of delivering multiple communications services on the same network, including cable services, local and long distance telephone service, and high-speed Internet access.

B. General Demographics of the Corridor

The Corridor includes nine counties containing 43 cities with an estimated population of 2.4 million people.[6] The area is home to 17 universities with an approximate annual enrollment of 200,000 students and is an incubator for high technology companies and research. It is recognized as a center for domestic and international commerce and enjoys the presence of some of the country's major corporations and popular tourist attractions.[7]

Regarding housing demographics, the principal cities in the Corridor where Grande is currently providing service contain about two-thirds of the total population in the Corridor, as

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[5] Exhibit B provides a graphical representation of Grande's fiber-to-the-curb network.

[6] Exhibit C provides a geographical illustration of the nine counties comprising the Greater Austin – San Antonio Corridor: Bastrop, Bexar, Caldwell, Comal, Guadalupe, Hays, Travis, Williamson, and Wilson. Greater Austin – San Antonio Corridor Council, San Marcos, Texas, corridor@itouch.net; http://www.zilker.net/corridor.

[7] See *Corridor of Opportunity: A Guide to the Austin – San Antonio Corridor*, Greater Austin – San Antonio Corridor Council, San Marcos, Texas, corridor@itouch.net; http://www.zilker.net/corridor. Some of the universities in the Corridor include the Universities of Texas at Austin and San Antonio, Southwest Texas State, St. Edward's, Trinity, St. Mary's, Southwestern, Texas Lutheran, and the University of Texas Health Science Center. Among the major corporations that call the Corridor home are USAA, Dell Computers, SBC Communications, Motorola, Texas Instruments, Diamond Shamrock, Advance Micro Devices, Apple Computers, Mission Pharmacal, Bausch & Lomb, Pace Foods, H-E-B, Westinghouse, IBM, Sony, Samsung, Tokyo Electron, VLSI, and Cypress Semiconductor. The Corridor also boasts major research organizations, such as MCC, Southwest Research Institute, Texas Technology and Research Foundation, SEMATECH, The J.J. "Jake" Pickle Center, and Texas Foundation for Biomedical Research. In addition, the area's major tourists attractions include The Alamo, Sea World, Fiesta Texas, the State Capitol, Sixth Street, Austin – Live Music Capital of the World, the San Antonio River Walk, the Texas Hill Country, and Retama Park.

illustrated in Table 1. In the three cities where Grande provides telecommunications service (Austin, San Antonio, and San Marcos), the percentage of the population that rents is well above the national average. Table 2 compares renters to owners for each city and corresponding county, the State of Texas, and the United States.

Table 1

Population of Cities Currently Served by Grande, as a Percentage of Overall Austin – San Antonio Corridor Population		
City	***Population***	***Percentage of Corridor Population***
Austin	656,562	27.4%
San Antonio	1,144,646	47.7%
San Marcos	34,733	1.5%
All Corridor Cities	2,400,000	100%
Source: U.S. Census Bureau, Census 2000		

Table 2

Housing Population of Renters v. Owners		
Jurisdiction	***Renter-Occupied Housing***	***Owner-Occupied Housing***
San Marcos	69.8%	30.2%
Austin	55.2%	44.8%
Travis County	48.6%	51.4%
San Antonio	41.9%	58.1%
Bexar County	38.8%	61.2%
Texas	36.2%	63.8%
Hays County	35.2%	64.8%
United States	32.3%	67.7%
Source: U.S. Census Bureau, Census 2000		

As Table 2 illustrates, the percentage of renters in the United States is 32.3%, just below the Texas average of 36.2%. However, the state and national averages pale in comparison to the percentage of renters in current Grande markets: 41.9% for San Antonio, 55.2% for Austin, and 69.8% for San Marcos. These comparisons support the conventional wisdom that metropolitan centers tend to attract a significant number of people searching for employment and educational

opportunities, which are abundant in the Austin – San Antonio Corridor. Further, the percentage of renter population falls neatly in the same range as the country's ten largest cities. As Table 3 shows, the renter population percentage for the ten largest cities in the country ranges from 39.3% (Phoenix) to 69.8% (New York). The Corridor cities of San Antonio (41.9%), Austin (55.2%), and San Marcos (69.8%) fall directly within that range. In addition, as Table 4 demonstrates, the cities of Austin and San Antonio alone contain 13.4% of the total apartment stock of the State of Texas.

Table 3

Renters v. Owners: Austin, San Antonio and San Marcos Compared to Top 10 Largest Cities			
City	***Total Population***	***Total Occupied Housing Units***	***Percentage of Renters***
1. New York	8,008,278	3,021,588	69.8%
2. Los Angeles	3,694,820	1,275,412	61.4%
3. Chicago	2,896,016	1,061,928	56.2%
4. Houston	1,953,631	717,945	54.2%
5. Philadelphia	1,517,550	590,071	40.7%
6. Phoenix	1,321,045	465,834	39.3%
7. San Diego	1,223,400	450,691	50.5%
8. Dallas	1,188,580	451,833	56.8%
9. San Antonio	1,144,646	405,474	41.9%
10. Detroit	951,270	336,428	45.1%
* Austin	656,562	265,649	55.2%
* San Marcos	34,733	12,660	69.8%
Source: U.S. Census Bureau, Census 2000			

Table 4

Apartment Stock in Austin – San Antonio Corridor		
Jurisdiction	***No. of Apartments***	***Percentage of Texas Apartment Stock***
Texas	1,550,517	100%
Bexar County	112,108	7.2%
San Antonio	103,799	6.7%
Travis County	107,852	7.0%
Austin	104,105	6.7%
Source: U.S. Census Bureau, Census 2000		

These tables make clear that any CLEC attempting to provide local service in the Austin – San Antonio Corridor must be able to provide service at residential MTEs in order to successfully compete with ILECs. Conversely, the tables also describe the incentives for ILECs to erect barriers to the CLEC in an effort to delay or deny access to residential MTEs. As these comments will describe below, Grande has experienced significant delays and attempts at denying access to residential MTEs in all three markets.

III. GRANDE'S EXPERIENCES IN PROVIDING LOCAL TELECOMMUNICATIONS SERVICES AT RESIDENTIAL MTES

The Public Notice identifies certain types of information that will be helpful to the Commission in its assessment of the current state of the market for advanced telecommunications services in MTEs. In particular, the Commission requests a description of carriers' and building owners' experiences in providing access for a variety of telecommunications services in MTEs and how state or local regulations have affected such experiences.

As Table 5 shows, Grande has requested, to date, access to 43 residential MTEs within the Corridor. Grande currently is providing bundled services consisting of cable service, local and long distance telephone service, and high speed Internet access in all MTEs, except the 16

properties where Grande would connect to the inside wire and where no demarcation point has been established. In these instances, negotiations are in progress or the property owner has not yet requested the demarcation point be relocated to the minimum point of entry ("MPOE"). As the table demonstrates, Grande has pre-wired one property and post-wired 11 properties. Table 5 also shows that San Marcos is the only city in the Corridor where Grande has been unsuccessful in obtaining access to the inside wire of MTEs. Where Grande has obtained access to the inside wire, the time period for negotiations and installation of necessary facilities has ranged from within 45 days to over 6 months and counting.

Table 5

Grande Serving Residential MTEs in Austin – San Antonio Corridor					
MTE City	***Access Requested***	***Pre-Wire***	***Post-Wire***	***Access Obtained at Demarcation Point***	***Access Not Obtained at Demarcation Point***
Austin	19	0	5	11	3
San Antonio	18	0	3	4	11
San Marcos	6	1	3	0	2
Total	43	1	11	15	16

A. Initiation of Access to Residential MTEs Under 47 C.F.R. §68.105

Grande typically serves as the communications agent for the owner of an MTE where it proposes to provide service. In all cases Grande agrees to provide bundled services over its fiber-based network. In order to deliver the services over existing MTE wiring, Grande must gain access to the inside wire. To gain access sometimes requires relocation of the MTE's demarcation point to the MPOE. Once a demarcation point is established, Grande will install (or have the ILEC install) a building entrance terminal ("BET"). As an alternative to using the existing inside wiring, Grande may post-wire the MTE property. The choice depends on several factors, such as the owner's willingness to request movement of the demarcation point to the

MPOE, the owner's willingness to allow post-wiring, the age and condition of the existing wiring, the cost to post-wire, and the cost of installing a BET.

Once Grande and the MTE owner have reached an agreement, Grande generally will request, as the agent for the property owner, movement of the demarcation point to the MPOE pursuant to 47 C.F.R. §68.105(d)(3) (if it has not already been located at the MPOE). Grande also requests an estimate of the ILEC costs associated with installing a new BET that will allow Grande access to the inside wire. In some instances, a single demarcation point is designated to serve an entire MTE campus, and in others, multiple demarcation points and BETs are necessary, one to serve each building within an MTE campus. Where the cost of installing the BET(s) at the demarcation point is less than the cost to post-wire, Grande will choose to install the BET(s).

Where a single demarcation point is established and Grande is able to use existing wire, a BET is installed to allow both Grande and an ILEC to access a common cross-connect panel. In all cases, the building owner can determine how the inside wire is maintained. Where multiple demarcation points are established, a BET with a common cross-connect panel is installed at each MTE building. In this scenario, each carrier can maintain the inside wire associated with its own customers.

Grande promotes the use of a BET that allows Grande and the ILEC to collocate in the same BET and have equal access to a common cross-connect panel and the inside wire. This solution is the most cost-effective and reduces the number of BET facilities at the MTE property.

B. Description of Grande's Experiences in Obtaining Access to Residential MTEs and the Problems Associated with Obtaining Access

In some cases Grande has been designated by the property owner as its agent for negotiations with the ILEC. However, Grande has experienced delays as a result of a variety of problems with ILECs in attempting to install facilities that will allow Grande access to the

customers of residential MTEs. The problems have included disputes regarding indemnification and disagreements over the actions required by an ILEC within the 45-day period specified by 47 C.F.R. § 68.105. Grande also has had protracted disputes over engineering solutions that would allow Grande to gain access to the MTE and the costs associated with different reconfigurations. The following paragraphs summarize Grande's major concerns in achieving MTE access.

1. ILEC Refusal to Accept that Demarcation Point Must Be Relocated within 45 Days from Request

One of the most difficult and expensive problems that Grande encounters when attempting to gain access to residential MTEs in the Corridor is the refusal of an ILEC to acknowledge that the *Competitive Networks Order* requires it to relocate a demarcation point at the request of a building owner (or its agent) within 45 days of such request.[8] By refusing to relocate the demarcation point within 45 days, the ILEC violates 47 C.F.R. § 68.105 and forces Grande to expend unnecessary amounts and encounter unnecessary delay in achieving access to customers in the MTE. The customers are, of course, denied the opportunity to obtain competitive services.

2. ILEC Argument that 45 Days Only Applies to Installation of Equipment

Grande has encountered the unreasonable argument that the 45-day requirement applies to the period of time for installation of equipment, such as a BET, but does not include the period of time during which the parties negotiate terms of access to the MTE customers. This ILEC argument assumes that the 45 days begins when Grande delivers a check to the ILEC in

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[8] The *Competitive Networks Order* directs that in order to further the development of facilities-based competition, and to enable a CLEC to negotiate terms and conditions of access only with a building owner where the owner so chooses, an ILEC must relocate the demarcation point within 45 days of the initial request of the building owner, negotiating terms in good faith. *See Competitive Networks Order* at 29-31, ¶ ¶ 44,48-49; *see also* 47 C.F.R. § 68.105(d)(3).

acceptance of a price quote to install the necessary facilities to relocate the point of demarcation to the MPOE.

3. ILEC Argument that 45 Days Are Business Days, Not Calendar Days

The Commission's rules, at 47 C.F.R. § 68.105(d)(3) require that "[t]he provider of wireline telecommunications services must negotiate terms in good faith and complete the relocation [of the demarcation point] within forty-five days from said request [for relocation]." Another ILEC argument is that the 45-day requirement is a 45-business day requirement. Although the ILEC cannot provide support for such an argument, and despite the plain language of both 47 C.F.R. § 68.105 and the *Competitive Networks Order*, the ILEC continues to propound this unreasonable reading of the requirement. The Commission's rules on computation of time (47 C.F.R. § 1.4) are based upon calendar days and include a separate definition of the term "business days." As subsection 68.105(d)(3) uses the term "days," while subsection 68.105(d)(4) uses the term "business days," the reference in subsection 68.105(d)(3) intends that the negotiations be completed within 45 calendar days.

4. ILEC Argument that Negotiations Over Terms and Conditions of Sharing MPOE Facilities Tolls the 45 Days Requirement

Grande also has encountered the unreasonable argument that the 45-day requirement is tolled during negotiations between the ILEC and the building owner (or its agent, Grande) over the terms and conditions of the relocation of the demarcation point and sharing of the BET. Such arguments are without merit, and in fact, would strip the *Competitive Networks Order* and its revision of the demarcation point rules under 47 C.F.R. Part 68 of any meaning. Nevertheless, this argument has effectively delayed Grande's access to MTE customers where an ILEC controls the existing wiring and distribution facilities at the MTE and refuses to give Grande access until the ILEC's terms and conditions are satisfied. Faced with such demands, a CLEC

must either capitulate or seek regulatory relief through a complaint proceeding. Either option increases the cost of entry and delays competitive service at MTE properties.

5. Unreasonable Negotiating Positions Taken by ILEC

Where an ILEC has insisted on negotiating terms and conditions for mutual access to BET facilities at MTEs before moving the demarcation point to the MPOE, the ILEC has successfully delayed Grande's access to certain MTEs for over six months in San Marcos, Texas.

a. Refusal to Accept Agency Agreement at Face-Value

Regarding Grande's agency representation of the MTE owner, an ILEC has taken two unreasonable positions. First, the ILEC has argued that under the provisions of 47 C.F.R. § 68.105 the ILEC is entitled to communicate directly with the property owner to explain the impact of the requested MPOE, irrespective of Grande's agency authority. Second, the ILEC has repeatedly challenged the sufficiency of the agency language in Grande's letter of agency ("LOA"). Even where Grande agreed to amend the language of the LOA, the ILEC has raised additional concerns regarding the agency language.

b. Transfer Risk of Transient Voltage to CLEC

One ILEC has argued that Grande should indemnify it against any potential damage to its network from transient voltage that might result from third party actions or lightning strikes. The ILEC effectively has requested indemnification by Grande against network damage that may result due to actions outside of Grande's control and that the ILEC itself would have paid for when it was the only provider of services at the MTE. ILECs should not be allowed to condition CLEC access upon the CLECs assumption of the ILECs business risk.

c. Request CLEC to Indemnify ILEC for Hypothetical Future Cost of Network Re-Design Should Third Carrier Serve MTE

The ILEC has also demanded indemnification by Grande for future network redesign costs associated with a potential but always unlikely third facilities–based carrier providing service at the MTE. In this instance, the ILEC has argued that Grande should bear the future costs to redesign the MTE facilities to accommodate a third-party entrant. Should a third facilities–based carrier propose to provide telecommunications service at the MTE in the future, such third carrier should bear the cost of entry. The ILEC should not be permitted to condition CLEC access on the CLEC's assumption of a potential future ILEC cost.

d. Refusal to Collocate in Dual BET Facility

In instances where Grande and the ILEC have agreed to multiple demarcation points at the MTE campus – one BET at each building in the MTE campus – Grande favors the use of a dual BET that allows for the collocation of ILEC and CLEC distribution facilities. There are several advantages to the dual BET: (1) it is the most cost effective alternative for multiple demarcation points; (2) it reduces the number of BET facilities from three to one – a benefit to property owners who want to minimize the number of telecom facilities on their property; (3) it enables both carriers equal and independent access to a cross-connect panel; and (4) it meets national electrical code standards and relevant Telcordia standards. One ILEC, however, has refused to collocate in such a BET citing indemnity concerns stemming from the fact that it would not own the equipment.

e. Insistence on Network Design at MTE that Is Prohibitively Expensive for CLEC

Where the ILEC has rejected use of the dual BET, it has instead argued for the installation of three BET facilities – one BET for each carrier and a common cross-connect terminal. The ILEC argues that such a network design (1) eliminates the ILEC's indemnity

concerns; (2) frees the ILEC and CLEC from network redesign costs associated with a future facilities-based carrier serving the MTE; and (3) helps future facilities-based carriers that could add their own BET in order to serve customers at the MTE. However, there are two critical problems with this solution: (1) it is prohibitively expensive compared to the cost to install dual BETs or post-wire the MTE; and (2) it contravenes property owners' desires to minimize the number of BET facilities at MTEs.

6. ILEC Argument that FCC Regulations Prohibit Multiple MPOEs

In negotiations to serve certain MTEs in the City of San Antonio, an ILEC has argued that Commission regulations prohibit the establishment of multiple demarcation points – one BET at each building within the MTE campus. This argument contradicts one of the stated purposes of the *Competitive Networks Order*, which is to give MTE owners control over inside wiring and entrance facilities serving the MTE.[9] The Commission has clarified the issue in the context of merger conditions. In the SBC/Ameritech Merger Order, the Commission directed SBC/Ameritech to initiate a trial with one or more interested CLECs in each of five large cities within the SBC/Ameritech service area to identify the procedures and associated costs required to provide CLECs with access to cabling within residential and small commercial MTEs where SBC/Ameritech controls the cables. More specifically, in new construction and retrofit of MTE properties, the Commission required SBC/Ameritech to install new cables in a manner that provides telecommunications carriers a single point of interconnection, provided that there may be multiple points of entry where the landlord requests diversity.[10]

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[9] *See Competitive Networks Order* at 30-31, ¶ ¶ 48,49.

[10] *In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Part 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*; CC Docket No. 98-141; *Memorandum and Opinion Order*; ¶

7. *Refusal to Allow Grande Access to BET Where MTE Owners Owns the Inside Wire and Has Contracted with Grande to Establish MPOE*

Grande also has experienced a situation where an ILEC, although it does not own or control the inside wire of the MTE, has refused to allow Grande, acting as agent of the building owner, access to the BET and the cross-connect panel through which Grande would access the MTE customers. The ILEC has threatened to file for injunctive relief in state district court should Grande proceed to access the inside wire through its BET without first negotiating an agreement setting the terms and conditions for sharing access to such BET facilities. By these actions, the ILEC directly contradicts the desire of the building owner for competitive service and the building owner's rights to control its own inside wire. For Grande, such denial of access to essential facilities increases the cost of MTE entry, and causes Grande loss of revenue from its inability to provide timely service to MTE tenants.

As has been noted in the *Competitive Networks Order*, the incumbent service provider at an MTE has significant power to delay and increase the cost of entry for of a CLEC to the property.[11] If the ILEC is able to exercise this type of authority over entrance facilities where it does not own the inside wire, the ILEC can successfully usurp control over inside wire away from the property owner and indirectly dictate the independent negotiations between a CLEC and the property owner, and the Commission's interest in fostering competition in telephone service will be frustrated.

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397 and Merger Condition 58.a; rel. October 9, 1999; 14 FCC Rcd. 14712 (1999) ("*SBC/Ameritech Merger Order*").

[11] *See Competitive Networks Order* at 12, ¶8; 13-14, ¶ 11.

IV. THE COMMISSION SHOULD TAKE ADDITIONAL STEPS TO ENSURE THAT CLECS HAVE ACCESS TO MTES ON REASONABLE TERMS AND CONDITIONS

Despite the improvements in competitive opportunities under the *Competitive Networks Order*, ILECs still have the ability to interpret the Commission's rules in ways that obstruct competitors' access to MTEs. To advance the Commission's policies set forth in the *Competitive Networks Order*, Grande respectfully proposes that the Commission clarify and further amend the inside wire access provisions of 47 C.F.R. § 68.105, as follows:

1. The 45-day requirement. Grande asks the Commission to clarify the terms of the 45-day requirement first announced in the *Competitive Networks Order* and promulgated as part of 47 C.F.R. § 68.105. More specifically, Grande recommends that the Commission clarify that the 45-day period is the period within which the ILEC is expected to resolve legal, financial and technical issues with the building owner and the CLEC and to install or permit installation of access facilities that will enable the CLEC to offer telecommunications service in the MTE by the end of the period.

In addition, to prevent repetition of claims that it has encountered from ILECs, Grande asks the Commission to explain, consistent with its current regulations, that the 45-day period refers to calendar days rather than business days and that the 45-day period is not the construction period that follows completion of negotiation of terms of access.

2. MTE control of access facilities. One of the major issues that Grande has faced in its negotiations with incumbents, and one of the significant delays in meeting the 45-day limit, is an incumbent demand that Grande pay unreasonably large amounts for access facilities and construction at MTEs that Grande seeks to serve. Although Section 68.105(a) establishes the point of demarcation at a point on the telephone company wire or a jack, Grande asks the

Commission to reduce ambiguity by specifying that the MTE owner controls the access facilities, such as the building entrance protector and cross-connect boxes. Grande proposes that the MTE owner or its agent be empowered to specify the type and capability of such facilities, subject only to requirements of reasonable cost and technical specifications.

Grande also asks the Commission to clarify that the principles of agency are not altered under 47 C.F.R. § 68.105 and that an ILEC, where a CLEC has obtained a letter of agency from a building owner, must negotiate with the CLEC and not insist upon working directly with the building owner. The building owner's rights will be protected in such a situation because the CLEC, as the building owner's agent, is required to discuss all relevant matters with the building owner. By demanding to communicate directly with the building owner, the ILEC not only in some instances violates the desire of the building owner, but it obstructs and delays the negotiations by which the CLEC would obtain access to the MTE to provide competitive services.

3. Indemnification demands. Another major impediment to reaching agreement on Grande's access to MTEs has been the demand by incumbents for indemnification against risks. ILECs have demanded that Grande indemnify the ILEC for any ILEC loss that might occur from transient voltage, such as from lightning strikes on facilities installed for Grande, and for any cost that might be imposed on the ILEC to accommodate a third facilities-based carrier at the MTE. Grande proposes that the Commission adopt a rule providing that an incumbent provider in an MTE may not require, as a condition of providing access for a CLEC, that the CLEC assume any risk, be it financial, operational or otherwise, that the ILEC bore before the CLEC requested access to the inside wire of the MTE. Such a rule should establish that each party

bears its own risk of doing business, while allowing each party to seek recovery against the other for any loss caused by such other.

4. Access at new or modified MTEs. Grande proposes that the Commission require MTE owners or ILECs, where reasonable in cost, to include as part of new construction or major modification of an MTE, the installation of access facilities at the MPOE that will enable two carriers to serve the MTE. For these purposes, "reasonable in cost" should mean a cost not in excess of 120% of the cost of single-carrier access facilities and any such excess should be recoverable from a competitive carrier who later uses such facilities to provide service at the MTE. In addition, Grande asks the Commission to require that any such new construction or modification be undertaken in a way that will not hinder or make unduly expensive or inconvenient future access to the MTE by a competitive carrier.

V. CONCLUSION

Although the Commission's regulations to date have provided important protection for a fair process of development of competition in telecommunications services, Grande's experience is that barriers remain to the establishment of fair competition for MTE customers. The Commission should provide further guidance to eliminate these barriers and the inefficiencies that remain, to prevent further potential misuse of market power by ILECs, and to ensure the development of a fully competitive environment for telecommunications services to customers in MTEs.

Respectfully submitted,

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ATTORNEYS FOR GRANDE
COMMUNICATIONS NETWORKS, INC.

March 8, 2002

CERTIFICATE OF SERVICE

I, Jacqueline R. Java, do hereby certify that copies of the foregoing "Comments of Grande Communications Networks, Inc." were served this 8th day of March 2002, by hand delivery or postage paid to the following parties.

The Honorable Michael K. Powell,
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Kevin J. Martin,
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Michael J. Copps
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Kathleen Q. Abernathy
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Office of Media Relations
Reference Operations Division
Federal Communications Commission
445 12th Street, S.W.
Room CY-A257
Washington, D.C. 20554

Mr. William Caton
Acting Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Qualex International
Federal Communications Commission
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

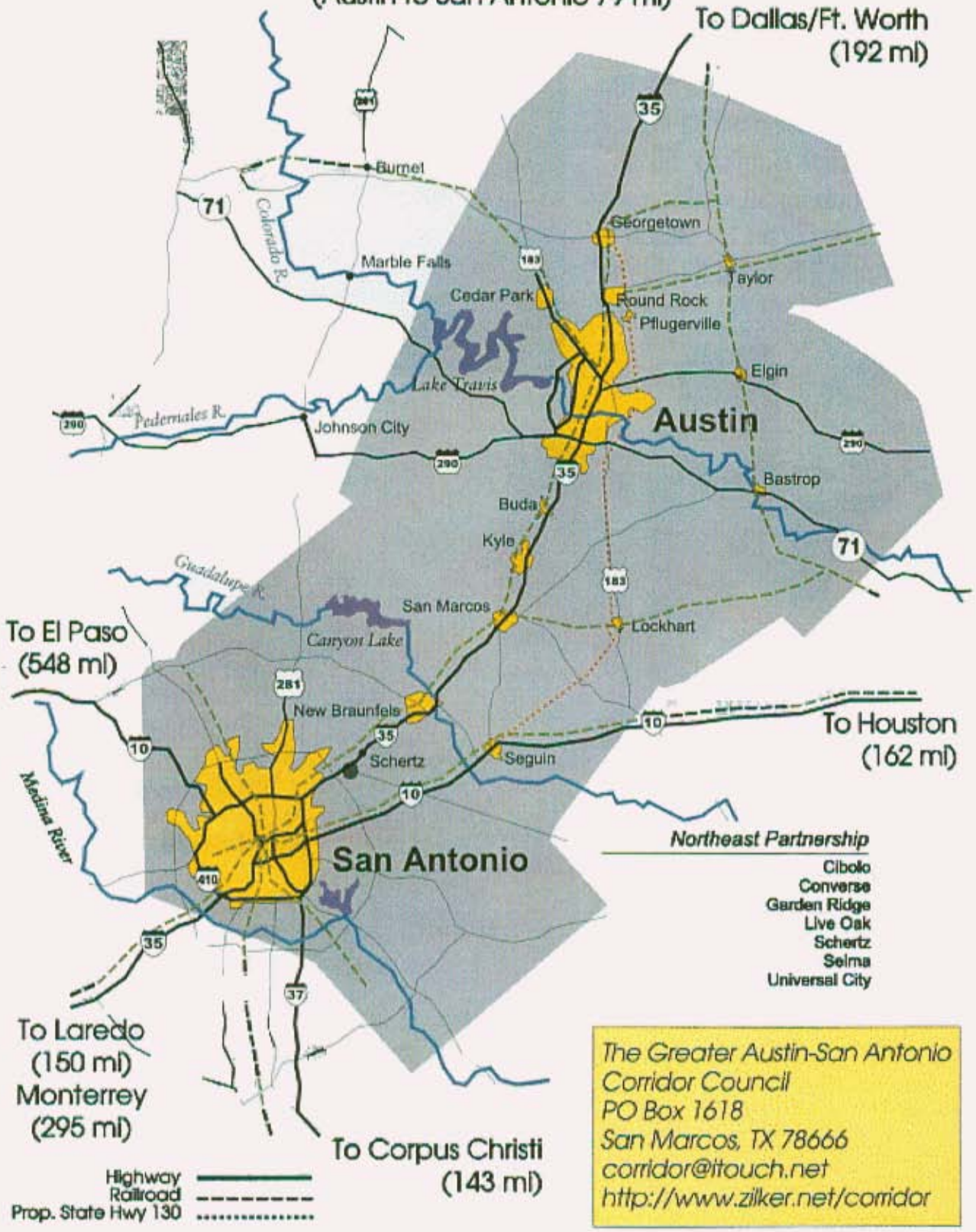
Leon Jackler
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 4-B445
Washington, D.C. 20554

Jacqueline R. Java

Exhibit A

The Greater Austin - San Antonio Corridor

(Austin to San Antonio 79 mi)



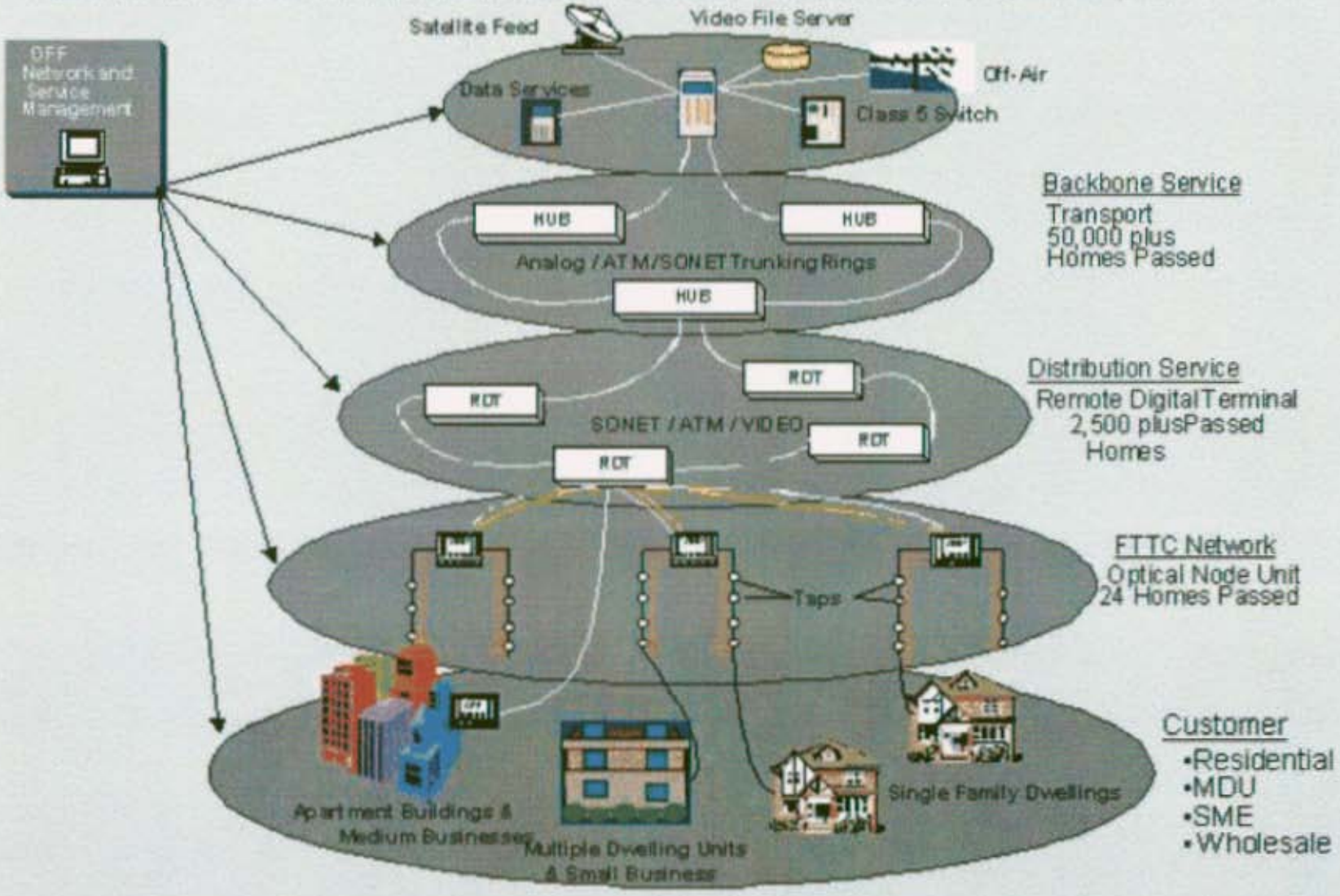
Northeast Partnership

Cibolo
Converse
Garden Ridge
Live Oak
Schertz
Selma
Universal City

The Greater Austin-San Antonio Corridor Council
PO Box 1618
San Marcos, TX 78666
corridor@itouch.net
http://www.zilker.net/corridor

Exhibit B

Grande's Fiber to the Curb Network



C

Exhibit C

The Greater Austin - San Antonio Corridor

Average Day Temp: 70°
Annual Sunny Days: 270
Annual Rainfall: 32 in.
Average Humidity: 53%
Population: 2.4 Million
Labor Force: 1.4 Million
Area: 7,585 Sq. Mi.

2 International Airports
2 North/South & East/West Railroads
2 North/South & East/West Interstates
2 Large International Seaports within 150 mi.